

CPA  
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375

CONTINUED PROSECUTION APPLICATION (CPA)  
REQUEST TRANSMITTAL

Submit an original, and a duplicate for fee processing.

(Only for Continuation or Divisional applications under 37 CFR 1.53(d))

CHECK BOX, if applicable:  
 DUPLICATE

JUL 15 2003

Assistant Commissioner for Patents  
Box CPA  
Washington, DC 20231

Attorney Docket No. of Prior Application	24050.042
First Named Inventor	Raimar Boehlke
Examiner Name	Azadeh Kokabi
Group Art Unit	3751
Express Mail Label No.	EV 255345324 US

This is a request for a  continuation or  divisional application under 37 CFR 1.53(d).

(continued prosecution application (CPA) of prior application number 09 / 847,676.

Apparatus for Guiding Sutures through a  
filed on 05/02/01, entitled Membrane Wall Near the Edge Region of an

Opening Provided Thereon

NOTES

**FILING QUALIFICATIONS:** The prior application identified above must be a nonprovisional application that is either: (1) complete as defined by 37 CFR 1.51(b), or (2) the national stage of an international application in compliance with 35 U.S.C. 371. Effective May 29, 2000, a CPA may only be filed in a utility or a plant application if the prior nonprovisional application was filed before May 29, 2000. A CPA may be filed in a design application regardless of the filing date of the prior application. See "Request for Continued Examination Practice changes to and Provisional Application Practice," Final Rule, 65 Fed. Reg. 50092 (Aug. 16, 2000); Interim Rule, 65 Fed. Reg. 14865 (Mar. 20, 2000), 1233 Off. Gaz. Pat. Office (Apr. 11, 2000).

**C-I-P NOT PERMITTED:** A continuation-in-part application cannot be filed as a CPA under 37 CFR 1.53(d), but must be filed under 37 CFR 1.53(b).

**EXPRESS ABANDONMENT OF PRIOR APPLICATION:** The filing of this CPA is a request to expressly abandon the prior application as of the filing date of the request for a CPA. 37 CFR 1.53(b) must be used to file a continuation, divisional, or continuation-in-part of an application that is not to be abandoned.

**ACCESS TO PRIOR APPLICATION:** The filing of this CPA will be construed to include a waiver of confidentiality by the applicant under 35 U.S.C. 122 to the extent that any member of the public who is entitled under the provisions of 37 CFR 1.14 to access to, copies of, or information concerning, the prior application may be given similar access to, copies of, or similar information concerning, the other application or applications in the file jacket.

**35 U.S.C. 120 STATEMENT:** In a CPA, no reference to the prior application is needed in the first sentence of the specification and none should be submitted. If a sentence referencing the prior application is submitted, it will not be entered. A request for a CPA is the specific reference required by 35 U.S.C. 120 and to every application assigned the application number identified in such request, 37 CFR 1.78(a).

**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

1.  Enter the unentered amendment previously filed on \_\_\_\_\_ under 37 CFR 1.116 in the prior nonprovisional application.

2.  A preliminary amendment is enclosed.

3. This application is filed by fewer than all the inventors named in the prior application, 37 CFR 1.53(d)(4).

- a.  **DELETE** the following inventor(s) named in the prior nonprovisional application:

- b.  The inventor(s) to be deleted are set forth on a separate sheet attached hereto.

4.  A new power of attorney or authorization of agent (PTO/SB/81) is enclosed.

5. Information Disclosure Statement (IDS) is enclosed:

- a.  PTO-1449

- b.  Copies of IDS Citations

RECEIVED

JUL 23 2003

TECHNOLOGY CENTER 3700

[Page 1 of 2]

Burden Hour Statement: This form is estimated to take 0.4 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Box CPA, Washington, DC 20231.

(Continued Prosecution Application (CPA) Request Transmittal (PTO/SB/29)) [4-2.1]—page 1 of 2

07/18/2003 HDMESS1 00000126 09847676

01 FC:2006  
02 FC:2202

375.00 OP  
153.00 OP

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

CLAIMS	(1) FOR	(2) NUMBER FILED	(3) NUMBER EXTRA	(4) RATE	(5) CALCULATIONS
	TOTAL CLAIMS (37 CFR 1.16(c) or (l))	37 -20* =	17	x \$ 18 =	\$ 306.00
	INDEPENDENT CLAIMS (37 CFR 1.16(b) or (l))	2 -3** =	0	x \$ _____ =	0
	MULTIPLE DEPENDENT CLAIMS (if applicable) (37 CFR 1.16(d))			+ \$ _____ =	
				BASIC FEE (37 CFR 1.16)	750.00
				Total of above Calculations =	1056.00
	Reduction by 50% for filing by small entity (Note 37 CFR 1.27).				528.00
	* Reissue claims in excess of 20 and over original patent. ** Reissue independent claims over original patent.			TOTAL =	528.00

6.  Small entity status: Applicant claims small entity status. See 37 CFR 1.27.
7. The Commissioner is hereby authorized to credit overpayments or charge the following fees to Deposit Account No. 18 - 2222:
- Fees required under 37 CFR 1.16.
  - Fees required under 37 CFR 1.17.
  - Fees required under 37 CFR 1.18.
8.  A check in the amount of \$ 528.00 is enclosed.
9.  Payment by credit card. Form PTO-2038 is attached.
10.  Applicant requests suspension of action under 37 CFR 1.103(b) for a period of \_\_\_\_\_ months (not to exceed 3 months) and the fee under 37 CFR 1.17(i) is enclosed.
11.  New Attorney Docket Number, if desired 24050.042  
[Prior application Attorney Docket Number will carryover to this CPA unless a new Attorney Docket Number has been provided herein.]
12. a.  Receipt For Facsimile Transmitted CPA (PTO/SB/29A)  
b.  Return Receipt Postcard (Should be specifically itemized, See MPEP 503)
13.  Other: \_\_\_\_\_

**NOTE:** The prior application's correspondence address will carry over to this CPA  
UNLESS a new correspondence address is provided below.

## 14. NEW CORRESPONDENCE ADDRESS

 Customer Number or Bar Code Label

021907

or  New correspondence address below

(Insert Customer No. or Attach bar code label here)

Name	Thomas I. Rozsa Rozsa & Chen LLP			
Address	15910 Ventura Boulevard Suite 1601			
City	Encino	State	CA	Zip Code
Country	USA	Telephone	(818) 783-0990	Fax (818) 783-0992

## 15. SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

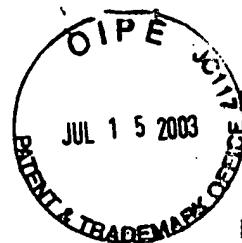
Name (Print /Type) Thomas I. Rozsa

Signature *Thomas I. Rozsa*

Registration No. (Attorney/Agent) 29,210

Date July 15, 2003

[Page 2 of 2]



Practition r's D k t N . 24050.042

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re prior application of: Raimar Boehlke, Werner Schwartz, Thomas Ischinger  
and Thomas Ehrl  
Application No.: 09/847,676 Group No.: 3751  
Filed: 05/02/2001 Examiner: Azadeh Kokabi  
For: APPARATUS FOR GUIDING SUTURES THROUGH A MEMBRANE WALL NEAR THE  
EDGE REGION OF AN OPENING PROVIDED THEREON

**NOTE:** "In addition to identifying the application number of the prior application, applicant should furnish in the request for an application under this paragraph the following information relating to the prior application to the best of his or her ability: (i) Title of invention; (ii) Name of applicant(s); and (iii) Correspondence address." 37 C.F.R. § 1.53(d)(8).

Box CPA  
Assistant Commissioner for Patents  
Washington, D.C. 20231

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JUL 23 2003

**CONTINUED PROSECUTION APPLICATION (CPA) TECHNOLOGY CENTER R3700**  
**(37 C.F.R. § 1.53(d))**

**WARNING:** CPA practice does not apply (other than design) where the prior application has a filing date on or after May 29, 2000.

**NOTE:** A continued prosecution application can only be used to file a divisional or continuation of a prior nonprovisional application and can NOT be used to file a continuation-in-part application. 37 C.F.R. § 1.53(d)(1).

**CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\***

(When using Express Mail, the Express Mail label number is mandatory;  
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

**MAILING**

deposited with the United States Postal Service in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231

37 C.F.R. § 1.8(a)

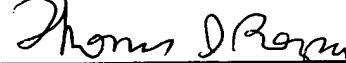
37 C.F.R. § 1.10\*

with sufficient postage as first class mail.  as "Express Mail Post Office to Addressee"

Mailing Label No. \_\_\_\_\_ (mandatory)

**TRANSMISSION** Mail Label No. EV 255345324 US

facsimile transmitted to the Patent and Trademark Office, (703) \_\_\_\_\_



Signature

Date: July 15, 2003

Thomas I. Rozsa

(type or print name of person certifying)

\* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

**WARNING:** While facsimil transmission can b used to obtain a date of transmission for this correspondence the date on the certificate of transmission (§ 1.8(a)) of an application under § 1.53(d) (CPA) is not controlling (or even relevant), in that a CPA filed by facsimil transmission will not b accorded a filing date as of the date on th certificate of transmission (§ 1.8(a)) unless Office records indicate, or applicant otherwise establishes pursuant to § 1.6(f), receipt in the Office of th complete application under § 1.53(d) on the date on the certificate of transmission, and that date is not a Saturday, Sunday, or Federal holiday. 37 C.F.R. § 1.8(b)(3) and 62 FR 53131, 53133, October 10, 1997. Requests for a continued prosecution application filed by facsimile transmission should be clearly marked "Box CPA". 37 C.F.R. § 1.53(d)(9).

Before using the CPA procedure note that a CPA application (§ 1.53(d)) cannot be amended to delete the specific reference to a prior application (e.g., for patent term purposes), as well as the specific reference to any application to which the prior application contains a specific reference under 35 USC 120, 121 and 365(c) and the expiration date under 35 USC 154(b)(2) of any patent issuing from the § 1.53(d) application will be based upon the filing date of the prior application (or the earliest application to which the prior application contains a reference under 35 USC 120, 121, and 365(c)). 62 FR 53131, 53145, October 10, 1997.

**WARNING:** A continued prosecution application "is a request to expressly abandon the prior application" as of its filing date. 37 C.F.R. § 1.53(d)(2)(v). Therefore, where the prior application is not to be abandoned, any continuation or divisional application must be filed under 37 C.F.R. § 1.53(b).

**WARNING:** While the filing of a continued prosecution application is the specific reference required by 35 U.S.C. § 120 to every application assigned the application number, identified in such request, no amendment in the application may delete the specific reference to any prior application (e.g., for patent term purposes). 37 C.F.R. § 1.53(d)(7).

**WARNING:** A request for an application under § 1.53(d) (CPA) cannot be submitted within papers filed for another purpose (e.g., the filing of a "conditional" request for a continued prosecution application within an amendment after final for the prior application). A "conditional" request for a CPA submitted (as a separate paper) with an amendment after final will be treated as an unconditional request for a CPA. This will result (§ 1.53(d)(2)(vi)) in the abandonment of such prior application, and (if so instructed in the request for CPA) the amendment after final in the prior application will be treated as a preliminary amendment in the CPA. 62 FR 53131, 53140, October 10, 1997.

**NOTE:** "The filing date of a continued prosecution application is the date on which a request on a separate paper for an application . . . is filled." 37 C.F.R. § 1.53(d)(2)(emphasis added).

1. This is a request for the filing of a

- continuation  
 divisional

continued prosecution application under 37 C.F.R. § 1.53(d) of the above-identified prior nonprovisional application.

**WARNING:** "A request for a CPA expressly abandons the prior application as of the filing date of the request for the CPA. See 37 C.F.R. § 1.53(d)(2)(v). Therefore, where the prior application is not to be abandoned, any continuation or divisional application must be filed under 37 C.F.R. § 1.53(b)." M.P.E.P. § 201.06(d), 7th ed.

It is further requested that this continued prosecution application utilize the file jacket and contents of the prior application, including the specification, drawings, and oath or declaration from the prior application, to constitute this new application, and that the application number of the above-identified prior application be assigned for identification purposes. 37 C.F.R. § 1.53(d)(2)(iv).

**NOTE:** Since a CPA cannot contain new matter, the oath or declaration filed in the prior nonprovisional application would supply all the information required under 35 U.S.C. § 111(a) and the rules to have a complete application and to obtain a filing date. Accordingly, the previously filed oath or declaration will be considered to be the oath or declaration of the CPA. M.P.E.P. § 201.06(d), 7th ed.

It is also requested that the above-identified prior application be expressly abandoned as of the filing date accorded this continued prosecution application. 37 C.F.R. § 1.53(d)(2)(v).

2. With respect to the above-identified prior nonprovisional application, this continued prosecution application is b ing filed:

A.  before the earliest of the:

- termination of the proceedings on the prior application (37 C.F.R. § 1.53(d)(1)(ii)(C))  
 payment of the issue fee on the prior application (37 C.F.R. § 1.53(d)(1)(ii)(A))  
 abandonment of the prior application (37 C.F.R. § 1.53(d)(1)(ii)(B))

OR

B.  after the payment of the issue fee — but a petition under § 1.313(b)(5) has been granted in the prior application. 37 C.F.R. § 1.53(d)(1)(ii)(A).

**NOTE:** "If an extension of time is necessary to establish continuity between the prior application and the CPA, the petition for extension of time should be filed as a separate paper directed to the prior nonprovisional application. However, a CPA is not improper simply because the request for a CPA is combined in a single paper with a petition for extension of time. . .

"While the filing of a CPA is not strictly a reply to an Office action mailed in a prior application, a request for a CPA is a paper directed to and placed in the file of the prior application, and seeks to take action in (i.e., expressly abandon) the prior application. Thus, it will be considered a 'reply' for purposes of 37 CFR 1.136(a)(3). As a result, an authorization in the prior application to charge all required fees, fees under 37 CFR 1.17, or all required extension of time fees to a deposit account will be treated as a constructive petition for an extension of time in the prior application for the purposes of establishing continuity with the CPA. The correct extension fee to be charged in the prior application would be the extension fee necessary to establish continuity between the prior application and the CPA on the filing date of the CPA.

"If an extension of time directed to the prior application is filed as a separate paper, it must be accompanied by its own certificate of mailing under 37 CFR 1.8 (if mailed by first class mail) or under 37 CFR 1.10 (if mailed by Express Mail), of the benefits of those rules are desired."

M.P.E.P. § 201.06(d), 7th ed.

C. The term for response or taking action in the prior application expires on \_\_\_\_\_

- An extension of time in the prior application is:  
 filed concurrently in the prior application  
 has been filed on \_\_\_\_\_

3. It is noted that:

- This application discloses and claims only subject matter disclosed in the prior application. 37 C.F.R. § 1.53(d)(2)(ii).
- Filing of this continued prosecution application is to be construed to include a waiver of confidentiality by the applicant under 35 U.S.C. § 122, to the extent that any member of the public, who is entitled under the provisions of § 1.14 to access to, copies of, or information concerning, either the prior application or any continuing application filed under the provisions of 37 C.F.R. § 1.53(d), may be given similar access to, copies of, or similar information concerning the other application or applications in the file jacket. 37 C.F.R. § 1.53(d)(6).
- Filing of this request is the specific reference required by 35 U.S.C. § 120 to every application assigned the application number identified in this request. No amendment in this application may delete this specific reference to any prior application. 37 C.F.R. §§ 1.53(d)(7) and 1.78(a)(2).

4. This continued prosecution application names as inventors:

- the same inventors named in the prior application on the date this continued prosecution application under 37 C.F.R. § 1.53(d)(2)(iii) is being filed.

- fewer than all the inventors named in the prior application. 37 C.F.R. § 1.53(d)(4).

**NOTE:** A CPA application may be filed by fewer than all the inventors named in the prior application, provided the request for an application under 37 C.F.R. § 1.53(d), when filed, is accompanied by a statement requesting deletion of the name(s) of the person(s) who are not the inventors of the invention being claimed in the new application. 37 C.F.R. § 1.53(d)(4).

- Please delete the following name(s) as inventor(s), who are not inventor(s) of the invention being claimed in this new application:

**NOTE:** "No person may be named as an inventor in an application filed under this paragraph who was not named as an inventor in the prior application on the date the application under this paragraph was filed, except by way of a petition under § 1.48." 37 C.F.R. § 1.53(d)(4).

**NOTE:** A request for an application under § 1.53(d) purporting to name as an inventor a person not named as an inventor in the prior application (even if accompanied by a new declaration/oath under § 1.63 listing that person as an inventor) will be treated as naming the same inventors named in the prior application (§ 1.53(d)(2)(iii)). 62 FR 53131, 53141, October 10, 1997.

- Please add the following name(s) as inventors:

A petition under § 1.48 is attached.

5. Attached hereto is an amendment to the prior application as it existed prior to the filing of this continuation prosecution application.

**NOTE:** "Any new change must be made in the form of an amendment to the prior application as it existed prior to the filing of an application under this paragraph. No amendment in an application under this paragraph (a continued prosecution application) may introduce new matter or matter that would have been new matter in the prior application. Any new specification filed with the request for an application under this paragraph will not be considered part of the original application papers, but will be treated as a substitute specification in accordance with § 1.125. However, the applicant must comply with the requirements of 37 CFR § 1.125(b) before the substitute specification will be entered into the CPA." 37 C.F.R. § 1.53(d)(5).

**WARNING:** An amendment after final filed and refused entry in the prior application will not be automatically entered in the CPA and specific instructions to enter amendment(s) refused entry in the prior application must be filed. Q&A 64, "Changes in Patent Practice and Procedure," effective December 1, 1997, supplemented up to February 1, 1998.

**WARNING:** "The original disclosure of a CPA is the same as the original disclosure of the patent non-continued prosecution application and amendments entered in the parent application(s). However, any subject matter added by amendment in the parent application which is deemed to be new matter in the parent application will also be considered new matter in the CPA. No amendment filed in a CPA, even if filed on the filing date of the CPA, may include new matter." M.P.E.P § 201.06(d), 7th ed.

- Please enter in this CPA application the unentered amendment under 37 C.F.R. § 1.116 filed in the prior application.

## **6. Information Disclosure Statement**

**NOTE:** *"All information disclosure statements filed in the prior application that comply with the content requirements of 37 CFR 1.98 will be considered in a CPA by the examiner. No specific request that the previously submitted information be considered in a CPA is required.*

*"In addition, all information disclosure statements that comply with the content requirements of 37 CFR 1.98 and are filed within three months of the filing date of a CPA will be considered by the examiner, regardless of whatever else has occurred in the examination process up to that point in time. Thus, in the rare instance that a final Office action or a notice of allowance is prepared and mailed prior to a date which is 3 months from the filing date of the CPA, any information contained in an information disclosure statement complying with 37 CFR 1.98, and filed within that 3-month window must be considered by the examiner. . . [I]t should be expected that a first Office action will normally issue in a CPA well within three months from the filing date of the CPA request. The submission of an information disclosure statement after the first Office action is mailed could delay prosecution and result in the loss of patent term. Therefore, applicants are encouraged to file any information disclosure statement in a CPA as early possible, preferably before the first Office action. . ." M.P.E.P § 201.06(d), 7th ed.*

- Enclosed is an Information Disclosure Statement in accordance with the requirements of 37 C.F.R. § 1.98.

## 7. Fee Calculation

NOTE: "(3) The filing fee for a continued prosecution application filed under this paragraph is:

(i) The basic filing fee as set forth in § 1.16; and

(ii) Any additional § 1.16 fee due based on the number of claims remaining in the application after entry of any amendment accompanying the request for an application under this paragraph and entry of any amendments under § 1.116 unentered in the prior application which applicant has requested to be entered in the continued prosecution application."

37 C.F.R. § 1.53(d)(3)(i) and (ii).

### A. Regular application

CLAIMS AS FILED					
Number filed	Number Extra	Rate	Basic Fee		
37 C.F.R. § 1.16(a)					
Total Claims 37	-20 = 17 X	\$18.00 =	\$748.80		\$750.00
(37 C.F.R. § 1.16(c))			306.00		
Independent Claims 2 -3 =	0 X	\$84.00 =	0.00		
(37 C.F.R. § 1.16(b))					
Multiple dependent claim(s), if any (37 C.F.R. § 1.16(d))	+ \$280.00				

- An amendment canceling extra claims is enclosed.
- An amendment deleting multiple-dependencies is enclosed.
- The fee for extra claims is not being paid at this time.

NOTE: If the fees for extra claims are not paid on filing, they must be paid or the claims canceled by amendment, prior to the expiration of the time period set for response by the Patent and Trademark Office in any notice of fee deficiency. 37 C.F.R. § 1.16(d).

Filing Fee Calculation \$ 1056.00

### B. Design application

(\$330.00—37 C.F.R. § 1.16(f))

Filing Fee Calculation \$ \_\_\_\_\_

### C. Plant application

(\$510.00—37 C.F.R. § 1.16(g))

Filing Fee Calculation \$ \_\_\_\_\_

(Continued Prosecution Application (CPA) [4-2]—page 5 of 9)

## 8. Assertion of Small Entity Status

Applicant hereby asserts status as a small entity under 37 C.F.R. § 1.27

NOTE: 37 C.F.R. § 1.27(c) deals with the assertion of small entity status, whether by a written specific declaration thereof or by payment as a small entity of the basic filing fee or the fee for the entry into the national phase and states:

"(c) Assertion of small entity status. Any party (person, small business concern or nonprofit organization) should make a determination, pursuant to paragraph (f) of this section, of entitlement to be accorded small entity status based on the definitions set forth in paragraph (a) of this section, and must, in order to establish small entity status for the purpose of paying small entity fees, actually make an assertion of entitlement to small entity status, in the manner set forth in paragraphs (c)(1) or (c)(3) of this section, in the application or patent in which such small entity fees are to be paid.

(1) Assertion by writing. Small entity status may be established by a written assertion of entitlement to small entity status. A written assertion must:

(i) Be clearly identifiable;

(ii) Be signed (see paragraph (c)(2) of this section); and

(iii) Convey the concept of entitlement to small entity status, such as by stating that applicant is a small entity, or that small entity status is entitled to be asserted for the application or patent. While no specific words or wording are required to assert small entity status, the intent to assert small entity status must be clearly indicated in order to comply with the assertion requirement.

(2) Parties who can sign and file the written assertion. The written assertion can be signed by:

(i) One of the parties identified in § 1.33(b) (e.g., an attorney or agent registered with the Office), § 3.73(b) of this chapter notwithstanding, who can also file the written assertion;

(ii) At least one of the individuals identified as an inventor (even though a § 1.63 executed oath or declaration has not been submitted), notwithstanding § 1.33(b)(4), who can also file the written assertion pursuant to the exception under § 1.33(b) of this part; or

(iii) An assignee of an undivided part interest, notwithstanding §§ 1.33(b)(3) and 3.73(b) of this chapter, but the partial assignee cannot file the assertion without resort to a party identified under § 1.33(b) of this part.

(3) Assertion by payment of the small entity basic filing or basic national fee. The payment, by any party, of the exact amount of one of the small entity basic filing fees set forth in §§ 1.16(a), (f), (g), (h), or (k), or one of the small entity basic national fees set forth in §§ 1.492(a)(1), (a)(2), (a)(3), (a)(4), or (a)(5), will be treated as a written assertion of entitlement to small entity status even if the type of basic filing or basic national fee is inadvertently selected in error.

(i) If the Office accords small entity status based on payment of a small entity basic filing or basic national fee under paragraph (c)(3) of this section that is not applicable to that application, any balance of the small entity fee that is applicable to that application will be due along with the appropriate surcharge set forth in § 1.16(e), or § 1.16(l).

(ii) The payment of any small entity fee other than those set forth in paragraph (c)(3) of this section (whether in the exact fee amount or not) will not be treated as a written assertion of entitlement to small entity status and will not be sufficient to establish small entity status in an application or a patent."

**WARNING:** 37 C.F.R. § 1.27(c)(4): "Assertion required in related, continuing, and reissue applications. Status as a small entity must be specifically established by an assertion in each related, continuing and reissue application in which status is appropriate and desired. Status as a small entity in one application or patent does not affect the status of any other application or patent, regardless of the relationship of the applications or patents. The refiling of an application under § 1.53 as a continuation, divisional, or continuation-in-part application (including a continued prosecution application under § 1.53(d)), or the filing of a reissue application, requires a new assertion as to continued entitlement to small entity status for the continuing or reissue application."

**WARNING:** "Small entity status must not be established when the person or persons signing the . . . statement can unequivocally make the required self-certification." M.P.E.P., § 509.03 (emphasis added).

- Status as a small entity was asserted in the prior application  
09 / 847,676, filed on 05/02/01, from which benefit is being claimed for this application under:

35 U.S.C. §  119(e)  
 120  
 121  
 365(c)

and which status as a small entity is still proper and asserted for this application.

- A copy of the written assertion of small entity filed in the prior application is included.

**NOTE:** A refund based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if an assertion under § 1.27(c) and a request for a refund of the excess amount are filed within three months of the date of the timely payment of the full fee. The three-month time period is not extendable under § 1.136. 37 C.F.R. § 1.28(a).

Filing Fee Calculation (50% of A, B or C above)

\$ 528.00

**9. Fee Payment Being Made at This Time**

- Not Enclosed  
 No filing fee is to be paid at this time.

**NOTE:** Since a general authorization to charge fees to a deposit account in the prior nonprovisional application carries over to the CPA, where the applicant desires to file the CPA without paying the filing fee on the filing date of the application, the applicant may file the CPA with specific instructions revoking the general authorization filed in the prior application. M.P.E.P § 201.06(d), 7th ed.

- Applicant hereby revokes the general authorization to pay fees filed in the prior nonprovisional application of which this is a CPA.

*(This and the surcharge required by 37 C.F.R. § 1.16(e) can be paid subsequently.)*

- Enclosed

**NOTE:** "An applicant filing a CPA by facsimile must include an authorization to charge the basic filing fee to a deposit account, or the application will be treated under 37 CFR 1.53(f) as having been filed without the basic filing fee (as fees cannot otherwise be transmitted by facsimile)." M.P.E.P § 201.06(d), 7th ed.

**NOTE:** A general authorization to charge fees to a deposit account filed in the prior nonprovisional application carries over to a CPA and, in such a situation, the necessary filing fee will be charged to the deposit account. M.P.E.P § 201.06(d), 7th ed.

Filing fee \$ \_\_\_\_\_

**NOTE:** Payment of a small entity basic filing fee will be treated as a reference to the statements in the prior application that status as a small entity is desired and proper. 37 C.F.R. § 1.28(a)(2).

Recording assignment (\$40.00—37 C.F.R. § 1.21(h))

*(See attached "COVER SHEET FOR ASSIGNMENT ACCOMPANYING NEW APPLICATION.")* \$ \_\_\_\_\_

Petition fee for filing by other than all the inventors or person on behalf of the inventor where inventor refused to sign or cannot be reached

\$130.00—37 C.F.R. §§ 1.47 and 1.17(i)) \$ \_\_\_\_\_

**Total fees enclosed** \$ \_\_\_\_\_

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## 10. Method of Payment of Fees

- Attached is a  check  money order in the amount of \$ \_\_\_\_\_
- Authorization is hereby made to charge the amount of \$ \_\_\_\_\_
  - to Deposit Account No. 18-2222
  - to Credit card as shown on the attached credit card information authorization form PTO-2038.

**WARNING:** Credit card information should not be included on this form as it may become public.

- Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

**NOTE:** Fees should be itemized in such a manner that it is clear for which purpose the fees are paid. 37 C.F.R. § 1.22(b).

**WARNING:** Unless an application under § 1.53(d) filed by facsimile includes an authorization to charge the basic filing fee to a deposit account, the applicant will be given a notification requiring payment of the appropriate filing fee (§ 1.53(d)(3)) and the late filing surcharge under § 1.16(e) to avoid abandonment of the § 1.53(d) application. 62 Fed. Reg. 53,131, 53,133 (Oct. 10, 1997).

## 11. Authorization to Charge Additional Fees

**WARNING:** If no fees are to be paid on filing, the following items should not be completed.

**WARNING:** Accurately count claims, especially multiple dependent claims, to avoid unexpected high charges, if extra claim charges are authorized.

- The Office is hereby authorized to charge, in the manner shown above, the following additional fees that may be required by this paper and during the entire pendency of this application.
  - 37 C.F.R. § 1.16(a), (f), or (g) (filing fees)
  - 37 C.F.R. § 1.16(b), (c), and (d) (presentation of extra claims)

**NOTE:** Because additional fees for excess or multiple dependent claims not paid on filing or on later presentation must only be paid on these claims canceled by amendment prior to the expiration of the time period set for response by the P.T.O. in any notice of fee deficiency (37 C.F.R. § 1.16(d)), it might be best not to authorize the P.T.O. to charge additional claim fees, except possibly when dealing with amendments after final action.

- 37 C.F.R. § 1.16(e) (surcharge for filing the basic filing fee and/or declaration on a date later than the filing date of the application)
- 37 C.F.R. § 1.17(a)(1)-(5) (extension fees pursuant to § 1.136(a))
- 37 C.F.R. § 1.17 (application processing fees)

**WARNING:** "A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission." 37 C.F.R. § 1.136(a)(3).

- 37 C.F.R. § 1.18 (issue fee at or before mailing of Notice of Allowance, pursuant to 37 C.F.R. § 1.311(b))

**NOTE:** Where an authorization to charge the issue fee to a deposit account has been filed before the mailing of a Notice of Allowance, the issue fee will be automatically charged to the deposit account at the time of mailing the Notice of Allowance. 37 C.F.R. § 1.311(b).

**NOTE:** 37 C.F.R. § 1.28(b) requires "Notification of any change in status resulting in loss of entitlement to small entity status must be filed in the application . . . prior to paying, or at the time of paying, . . . issue fee." From the wording of 37 C.F.R. § 1.28(b), (a) notification of change of status must be made even if the fee is paid as "other than a small entity" and (b) no notification is required if the change is to another small entity.

## 12. Instructions as to Overpayment

**NOTE:** "Amounts of twenty-five dollars or less will not be returned unless specifically requested within a reasonable time, nor will the payer be notified of such amounts; amounts over twenty-five dollars may be returned by check or, if requested, by credit to a deposit account." 37 C.F.R. § 1.26(a).

- Credit Account No. 18-2222  
 Refund

## 13. Change of Correspondence Address Since Filing of Parent Application

**NOTE:** "Special care should be taken in continuation or divisional applications to ensure that any change of correspondence address in a prior application is reflected in the continuation or divisional application. For example, where a copy of the oath or declaration from the prior application is submitted for a continuation or divisional application filed under 37 CFR 1.53(b) and the copy of the oath or declaration from the prior application designates an old correspondence address, the Office may not recognize, in the continuation or divisional application, the change of correspondence address made during the prosecution of the prior application. Applicant is required to identify the change of correspondence address in the continuation or divisional application to ensure that communications from the Office are mailed to the current correspondence address. 37 CFR 1.63(d)(4)." § 601.03, M.P.E.P., 7th Edition.

(complete the following if applicable)

Since this filing is a  continuation  divisional there is attached hereto a Change of Correspondence Address so that there will be no question as to where the PTO should direct all correspondence.

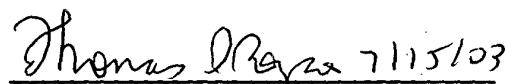
**NOTE:** An attorney acting under § 1.34(a) may expressly abandon an application as of the filing date granted to a continuing application thereof when filing such a continuing application. See § 711, M.P.E.P., 7th Edition.

Date: July 15, 2003

Reg. No. 29,210

Tel. No. (818) 783-0990

Customer No. 021907

  
Thomas I. Rozsa 7/15/03

SIGNATURE OF PRACTITIONER

Thomas I. Rozsa

(type or print name of practitioner)

ROZSA & CHEN LLP  
15910 Ventura Boulevard, Suite 1601  
P.O. (Correspondence) Address  
Encino, California 91436-2815

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